

TESTIMONY OF MARY L. KENDALL
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DEPARTMENT OF THE INTERIOR BEFORE THE
HOUSE COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
SUBCOMMITTEE ON OVERSIGHT
MARCH 14, 2013

Mr. Chairman, and members of the Subcommittee, good afternoon. Thank you for the opportunity to testify about the major management and performance challenges facing the Department of the Interior (DOI), and the approach the Office of Inspector General (OIG) takes for providing oversight in these program areas.

In accordance with the Reports Consolidation Act of 2000, the OIG makes a determination as to what the most significant management and performance challenges are facing DOI. In the past, the OIG would make this determination by looking at our recent past audit and investigative work to identify the major challenges. In the past two years, we chose to take a more prospective outlook. Utilizing a number of resources, including budget justifications, program descriptions, press statements and coverage, congressional and public interest, the OIG identified the top challenges we see facing the Department. We then met with DOI officials to gain their perspective on the challenges we identified, and together agreed upon the challenge areas we would report on. In those areas that the OIG had not done significant (or in some cases, any) audit or investigative work, we asked the Department to identify one or two program areas that present the most challenge or concern to the Department. Prior to issuing our report, we have done some limited analysis to better identify the scope of issues involved in these greater challenges. We then use the major management and performance challenges to inform and guide our audit (and to the extent possible, investigative) work in the coming year.

Last year, the OIG identified the top management and performance challenges as—

- Energy management;
- Climate change;
- Water programs;
- Responsibility to Indians and Insular Areas;
- *Cobell* and Indian land consolidation; and
- Operations efficiencies.

Therefore, in planning our audit and evaluation work for fiscal year 2013 and determining the scope for this work, we were guided by these top challenge categories in developing our targeted categories:

Energy

- Mineral Material Sales – Determine whether BLM is obtaining market value for mineral materials on public lands.

- Underground Injection Controls – Determine whether the Department has (1) an accurate inventory of authorized underground injection sites and (2) adequate environmental safeguards.
- Offshore Renewable Energy – (1) Identify ongoing and proposed offshore renewable energy projects. (2) Evaluate DOI’s budget and resource planning to determine if the Offshore Renewable Energy program is sufficiently funded and staffed to conduct leasing and oversight activities associated with offshore renewable energy. (3) Evaluate the process for establishing renewable energy fees to ensure fees are well reasoned and ensure a fair return to the federal government. (4) Evaluate the inspection and enforcement of the Offshore Renewable Energy program.
- Gulf of Mexico Energy Security Act (GoMESA) – Determine whether appropriate controls are in place to adequately ensure that GoMESA funds are being used only for authorized purposes. (The Act significantly enhances outer continental shelf oil and gas leasing activities and revenue sharing for the four Gulf oil and gas producing States of Alabama, Louisiana, Mississippi and Texas. Qualified revenues are transferred to the U.S. Treasury and to the Land and Water Conservation Fund (LWCF). From here, they are disbursed to the States. These funds are to be used for coastal conservation, restoration and hurricane protection.)
- Osage Nation Oil and Gas Program – Determine (1) the level of oil and gas oversight expertise at the Osage Agency and (2) what oil and gas oversight procedures exist as the Osage Agency (both in writing and in practice).
- Onshore Oil and Gas Permitting – Determine the effectiveness and efficiency of reviewing and issuing drilling permits on Federal and Indian oil and gas leases.
- Pipeline Management – Determine whether DOI has adequate inspection and enforcement programs to ensure that critical security and maintenance measures are effectively planned and implemented.

Climate Change

- Climate Change – Determine whether funding for climate change related projects are being effectively utilized and properly managed at the bureau level.

Water

- Coastal Impact Assistance Program (CIAP) – To (1) determine whether CIAP grant recipients have complied with CIAP’s authorizing legislation, Federal regulations, DOI policies, and grant terms and conditions; and (2) identify grant

management challenges that FWS should address as it assumes responsibilities for CIAP management from BOEMRE.

- Bureau of Reclamation Wastewater and Groundwater Programs – Determine whether (1) grants awarded under the WaterSMART programs contribute to sustainable water resources and (2) the WaterSMART grant program is being effectively administered.

Indians and Insular Areas

- Election System of the Virgin Islands – Administration of Election Laws – Determine whether the activities and functions of the Joint Boards of Elections are in compliance with election rules issued by the Office of the Supervisor of Elections.
- Evaluation of Guam Memorial Hospital Authority – Determine the ability of Guam’s Memorial Hospital to meet the medical care needs of the citizens of Guam in light of the planned increase in population from the military relocation. Further, determine whether opportunities exist to enhance medical services provided.
- Public Finance Authority – Monitoring of Capital Improvement Projects, Government of the Virgin Islands – Determine whether the Public Finance Authority adequately monitored the release of funds for its intended purpose in their capital improvement projects.

DOI Business Processes and Operations

- GovTrip Use and Monitoring – Determine whether proper management steps are being taken to use and monitor GovTrip
- Wildland Fire Controls – Determine whether the Wildland Fire program costs comply with applicable laws, regulations, policies and procedures. In addition, evaluate the effectiveness of internal controls over fire suppression and preparedness funding and the safeguarding of assets and resources.
- Wildland Fire Suppression Aviation Usage – Determine whether DOI is able to adequately justify its use of Interior-owned and/or contracted aircraft and related costs during wildfire land suppression activities.
- Recreation Revenue – Determine whether bureaus are obtaining market value (where appropriate) for recreation activities and amenities on public lands.
- USGS Requirements Under the National Earthquake Hazard Reduction Program (NEHRP) – Evaluate the effectiveness of the program, including the change from a discipline-focused organization to “science strategy” mission areas.

- Safety of Watercraft and Diving Operations – Determine whether bureaus are compliant with Federal and Departmental requirements. Specifically: (1) are watercraft operators and divers properly trained; (2) are required records kept; and (3) are safety incidents properly reported and investigated with causes mitigated?

In addition to these top challenges categories, we have maintained two additional targeted categories for audits and evaluations, as they are so integral to the mission of DOI and have been areas of concern historically –

- Asset protection and preservation; and
- Health, safety, security, and maintenance.

For investigations, we are necessarily more reactive. We cannot plan our investigative activities like we do audits and evaluations. We are, however, guided by five investigative priorities –

- Contract and grant fraud;
- Energy;
- Scientific misconduct;
- Ethical violations;
- Public safety and security.

Clearly, our investigative priorities overlap to a certain degree with our audit and evaluation priorities. This is a natural overlap, not necessarily intentional. But as an OIG of less than 300 employees that oversees a Department with over 75,000 employees, we must focus our oversight activities on those areas of greatest concern and challenge. Although there may be many other ways in which to fine-tune this focus, using targeted categories and investigative priorities help us deploy our resources to the areas in greatest need of oversight in the Department of the Interior.

Mr. Chairman and members of the Subcommittee, this concludes my formal testimony. I appreciate the opportunity to be here today, and would be happy to answer any questions you may have.

HOUSE COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
SUBCOMMITTEE ON OVERSIGHT
“Top Challenges for Science Agencies: Reports from the Inspectors General – Part 2”
Questions for the Record, Ms. Mary L. Kendall, Deputy Inspector General
U.S. Department of the Interior

Questions submitted by Dr. Paul Broun, Chairman

Scientific Misconduct - Drakes Bay

- 1) Your office has done some work on the issues surrounding the Drakes Bay Oyster Company (DBOC), but has it looked into why former Secretary Ken Salazar based his decision to deny DBOC a Special Use Permit (SUP) on a policy and legal argument instead of on a scientific basis?

Answer: No.

- 2) The former Secretary’s DBOC decision has the appearance of the Administration choosing when it can ignore science in order to further a pre-established decision. This contradicts what the President said in a March 2009 memorandum about the scientific process: “Science and the scientific process must inform and guide decisions of my Administration on a wide range of issues, including . . . protection of the environment.” I am further concerned by the amount of money wasted on multiple studies that in the end the Secretary “deemed optional and tangential to his decision.”
 - a. If the decision to shutter DBOC operations was a policy decision, have you done any work to determine why DOI invested so much time and resources to discredit the company’s continued existence?

Answer: No. OIG has not examined the Department’s expenditure of funds relating to DBOC.

- b. Have you done any work to determine how much DOI spent on studies related to Drakes Bay? If not, can you provide the Committee with an estimate of how much the Department has spent so far on the DBOC issue, including all studies, reviews, environmental impact statements, NAS studies, etc.?

Answer: OIG has not done any work to determine how much DOI spent on studies related to Drakes Bay, and it does not have an estimate of how much DOI has spent. The National Park Service should have this information.

- 3) Do you know of other examples where DOI initiated scientific studies on an issue but then made a decision on policy grounds instead of on the results of the scientific reviews?

Answer: No. There may be other instances where DOI initiated scientific studies on an issue but then made a decision on policy grounds, but OIG has not received allegations of wrongdoing in this regard. The science bureaus in the Department would be better positioned to answer this question.

- 4) Your office's February 7, 2013 investigative report of DBOC provides some discussion over the definition of best available science pertaining to soundscape, and when it is appropriate to use best available data as opposed to collecting new data in order to produce a report of the highest quality. In previous DOI Environmental Impact Statements (EIS), how many used best available data (or reference data, or proxy data) pertaining to the issue of soundscape, as opposed to new data collected from the sites or projects subject to the EISs?

Answer: OIG does not have the data to answer this question. It would be best answered by the bureaus that conduct EISs.

- 5) Please provide the Committee with complete and unredacted copies of all attachments that accompany the February 7, 2013 DBOC report.

Answer: A copy of the unredacted report and all attachments will be provided to the Chair, but these documents should not become a part of the record as they contain personal privacy information and/or other information that is exempt from disclosure under the Freedom of Information and Privacy Acts and would not be released to the public. A public version of this report was posted to the OIG Web site in February 2012.

- 6) Please provide the Committee with all records of correspondence, including e-mails, amongst all staff in your office including you, and between all staff in your office and all staff at the Department, regarding the February 7, 2013 DBOC report.

Answer: The requested correspondence, including emails, is being compiled and will be provided to the Chair as soon as it is available. This correspondence also should not become a part of the record as it contains personal privacy information and/or other information that is exempt from disclosure under the Freedom of Information and Privacy Acts and would not be released to the public.

Scientific Misconduct- Dr. Charles Monnett

- 7) According to Public Employees for Environmental Responsibility's (PEER) website, your office has an open investigation into Dr. Charles Monnett, a senior scientist with DOI's Bureau of Ocean Energy Management (BOEM), and lead author of a research paper on sightings of polar bears drowned in open water following a storm. Your office has been reviewing Dr. Monnett for a few years now.

- a. What is the Department's response to your investigation?

Answer: DOI's responses, and the OIG memo seeking clarification will be provided to the Chair under separate cover, but these documents should not become a part of the

record as they contain personal privacy information and/or other information that is exempt from disclosure under the Freedom of Information and Privacy Acts and would not be released to the public.

- b. What ongoing work do you have regarding Dr. Monnett, and when will you release the results of your review?

Answer: The OIG file on this matter is closed. No further work is anticipated. The public version of the report of investigation was posted to the OIG Web site in February 2012.

Scientific Integrity – Klamath

- 8) The Department of the Interior has been the subject of at least one major allegation of a scientific integrity violation, related to the removal of the Klamath River Dam, claiming that Department officials skewed the reporting of scientific findings to fit previously stated Department priorities. In this specific incident, the Scientific Integrity Officer was the individual who brought the complaint against the Department, and alleges that he was subject to retaliatory efforts because of his statements.

I have serious concerns about DOI's scientific integrity policy when it is the Scientific Integrity Officers who are filing complaints. Further, in this case, the Scientific Integrity Officer's pleas for assistance from your office also went unheeded.

Answer: DOI Scientific Integrity Officers (SIOs), like all other DOI employees, have a positive duty to report scientific integrity violations and scientific misconduct. The SIO to which this question refers received considerable attention from OIG.

As background, Dr. Paul Houser was hired by DOI on April 10, 2011, to work as a science advisor for the Bureau of Reclamation (USBR). He also served as the SIO for USBR and worked on establishing scientific integrity policy for DOI. Dr. Houser was required to serve a 1-year probationary period through April 10, 2012.

On February 8, 2012, Dr. Houser contacted the OIG Assistant Inspector General for Whistleblower Protection (AIG for WBP) to report that his supervisor, Ms. Kira Finkler, had told him that he had the option of resigning or being fired by February 10, 2012, for unsatisfactory performance during his probationary term.

Dr. Houser believed that Ms. Finkler's action was in retaliation for a September 15, 2011 email he sent to her expressing his opinion about the content of a draft press release on the Klamath River Dam removal. He believed that the draft press release demonstrated a biased view of the science and tended to present only the positive without the uncertainties or negatives. Dr. Houser advised the AIG for WBP that the Klamath Dam issue was politically charged and that there were people on both sides of the science on this issue. Notably, Dr. Houser was not on the Klamath River Dam team. Nonetheless, the draft press release was modified to address the majority of Dr. Houser's concerns.

Prior to February 8, 2012, Dr. Houser had not filed a scientific integrity complaint with OIG, nor did he follow the procedures set out in the DOI scientific integrity policy (305 DM 3) in connection with his concern that the draft press release demonstrated bias. It was not until the AIG for WBP inquired whether Dr. Houser had filed a complaint under 305 DM 3 that he started to draft one. He filed a complaint on February 24, 2012, more than 5 months after he provided his input on the draft press release.

In the 2 weeks following his contact with OIG, the AIG for WBP spoke directly with Dr. Houser to advise him on his rights under the law, administrative process and procedure, and possible informal and formal venues for resolution of his reprisal complaint. He was advised that he had several options available to him:

1. He could work to informally resolve the issues he had with Ms. Finkler personally or through DOI's alternative dispute resolution program.
2. The AIG for WBP could intervene informally to achieve informal resolution of his complaint.
3. He could immediately file a formal complaint with the U.S. Office of Special Counsel (OSC) and request a stay order through the Merit Systems Protection Board (MSPB) to prevent his firing.

The AIG for WBP discussed MSPB case law and the merits of being fired rather than resigning so that Dr. Houser might fully protect his rights at OSC and MSPB. Because time was of the essence, the AIG for WBP also recommended filing an immediate formal complaint with OSC and request for a stay order.

The AIG for WBP advised Dr. Houser that he had three major hurdles to overcome in his complaint to the OSC:

1. his status as a probationary employee;
2. whether he could present sufficient information to conclude with a substantial likelihood that he had made a disclosure as required by statute; and
3. the fact that he would need to explain why he did not file a scientific integrity complaint in September 2011, but waited until his proposed removal to file one.

This was problematic because as an SIO, he had helped create the DOI scientific integrity policy and was responsible for its implementation in his bureau. Section 3.8(A) of the policy governs procedures for reporting and resolving allegations regarding loss of scientific and scholarly integrity. Dr. Houser did not comply with this and other provisions of the policy.

Dr. Houser chose first to attempt informal resolution with Ms. Finkler. This was unsuccessful. A formal complaint to OSC appeared to offer the most productive and immediate outcome given OSC's statutory authority, and to afford Dr. Houser the opportunity to request a stay order from the MSPB. On February 24, 2012, Dr. Houser told the AIG for WBP that he would file a formal complaint with OSC and request a stay order. The AIG for WBP advised Dr. Houser that she would provide any information or support necessary to the OSC attorney or investigator assigned.

If there was a science issue between September 2011 and February 8, 2012, that merited a formal scientific integrity complaint, it was not a priority for Dr. Houser. His complaint came more than 5 months after the “discovery of alleged misconduct,” and advanced outside the established process that Dr. Houser helped to develop. Dr. Houser told Ms. Finkler that if he could retain his position, then the science issues could be resolved internally. When this could not be achieved, Dr. Houser filed the scientific integrity complaint. At the same time, he filed it with several members of Congress as well as sending a copy to the Siskiyou County Board of Supervisors, which, he believes, leaked it to the press. This temporarily usurped the process for his complaint to be properly addressed under the DOI scientific integrity policy.

- 9) OIG, through the AIG for WBP, responded to Dr. Houser’s pleas for assistance by guiding him to the most appropriate forum for his allegation of reprisal to be addressed—OSC. It is our understanding that Dr. Houser is satisfied with the settlement he achieved through OSC on his reprisal complaint.

Is anyone responsible for scientific integrity at DOI?

Answer: DOI has a nascent program to ensure scientific integrity, which was launched when it issued its scientific integrity policy in 2011. See www.doi.gov/scientificintegrity/index.cfm.

- 10) Besides the Klamath River Dam situation, have there been other allegations at DOI of scientific findings being manipulated or otherwise incorrectly or inaccurately reported in order to conform to a predetermined policy goal?

Answer: Since 2001, OIG has investigated several other allegations of scientific wrongdoing: the case of lynx fur being “planted” during a study; two cases involving allegations of scientific wrongdoing relative to Endangered Species Act (ESA) decisions; and allegations of scientists deliberately misleading the court in an ESA litigation case.

- 11) Is this part of a larger cultural problem within the Department of the Interior?

Answer: Even if the above instances are combined with the Klamath, Monnett, and DBOC matters, as well as the matters identified in #12, below, OIG has not concluded that this is a large cultural problem in DOI.

- 12) Besides the Klamath River Dam situation, have you identified any other cases of falsification of scientific findings, and do you have any ongoing work on them?

Answer: OIG would not consider the complaint about the Klamath River Dam draft press release a case of “falsification of scientific findings,” nor would the following fall within that category, but OIG has identified several other matters that fall within the category of allegations of scientific misconduct. The lynx case and the two cases relative to ESA decisions identified above would fall in this category, as would OIG findings in its first

investigation concerning DBOC. OIG has three open matters that have scientific implications, but we have not yet determined whether they are scientific misconduct.

Scientific Misconduct- General

- 13) Understanding that DOI has challenges with scientific misconduct as well as scientific integrity issues at the Department, how does your office: (a) distinguish between the two at DOI, and (b) ensure rigorous oversight in pursuing both types of claims at DOI?

Answer: (a) For the past several years, the OIG Office of Investigations has attempted to address complaints of scientific misconduct and scientific integrity by reviewing the incoming complaints on a case-by-case basis. OIG has never considered itself positioned to adequately examine whether the science itself is sound or a “proper” scientific decision was made. As a matter of practice, OIG generally seeks to determine whether an established process exists and if that process had been properly followed. If the process was deviated from, we attempt to determine why the deviation occurred and what resulted from the deviation.

As the development of the scientific integrity policy took place in DOI, OIG began refining its procedures and practice. Efforts were made to distinguish between misconduct and integrity by defining scientific misconduct as “misconduct by scientists” and scientific integrity as whether the methodology and processes were followed in accordance with established protocols. Over time, however, the terms “scientific integrity” and “scientific misconduct” have been used interchangeably, causing confusion both internally and externally.

OIG is currently reviewing the OIGs of science agencies to identify best practices and to improve upon our own policy and procedures for handling such matters.

(b) Rigorous oversight of scientific misconduct and scientific integrity will be hampered by diminishing resources. Staffing gains made in the previous 5 years have been lost due to sequestration and other budgetary cuts. Our budget has been reduced to 2009 levels, and we have reduced our staff by over 20 FTEs. We must rely, to a great extent, on voluntary compliance and adherence to the scientific integrity policy and the reporting of violations by scientists and other employees in the field. We will continue to promote our Whistleblower Protection and Complaint Hotline programs. In addition, we will periodically conduct program evaluations to determine adherence to established policies and procedures.

When complaints of misconduct are received, we will conduct investigations when warranted and provide DOI the information it needs to take corrective action. We will continue to require notice of administrative action taken by DOI and will routinely report on our investigations into this area in our semiannual reports to Congress.

- 14) Have you or any of your staff in any way discouraged or intervened to prevent a DOI investigation of scientific integrity or misconduct from going forward?

Answer: No. In fact, it was the OIG evaluation entitled “Interior Lacks a Scientific Integrity Policy,” issued in April 2010, which caused DOI to finally issue its scientific integrity policy.

Endangered Species Act

- 15) According to a recent news story, the Administration received a handful of proposals from environmental groups on how it could improve implementation of the Endangered Species Act. Has your office seen these proposals, and do you have any plans to monitor how the Department responds to these proposals, particularly if it decides to incorporate any of them?

Answer: OIG is charged with preventing and detecting fraud, waste, and abuse in DOI programs and operations. With approximately 250 employees, we are one of the smallest Cabinet-level OIGs, and so we simply cannot monitor every one of the many programs and over 70,000 employees that make up DOI. DOI manages more than 500 million acres of land and 700 million acres of subsurface minerals, and has jurisdiction over 1.7 billion acres of the Outer Continental Shelf. It also manages 401 units of the national park system, 561 national wildlife refuges, 73 fish hatcheries, 21 national conservation areas, and 19 national monuments. It collects billions of dollars in revenues. It is the largest supplier and manager of water in the 17 western States. It is responsible for 476 dams and 337 reservoirs that deliver irrigation water to 31 million people. It also has a responsibility toward the 483 million annual visitors to its lands, parks, refuges, and recreation sites. In addition, it is responsible for maintaining relationships with 566 federally recognized Indian tribes, for the largest land trust in the world, and for managing nearly \$4.4 billion of trust funds held in accounts for more than 250 tribes and over 387,000 Individual Indians.

Absent allegations of fraud, waste, or abuse, OIG does not intend to monitor DOI’s response to the Endangered Species Act proposals identified above.

Collaborative Approach

- 16) Your office has a different approach to its responsibilities in that you coordinated with the Department to collaboratively identify performance and management challenges at DOI?

- a. What made you embrace this approach, and do any other IG offices follow the same protocol?

Answer: From fiscal years (FYs) 2007 through 2010, OIG was reporting, and DOI management was disputing, the status of seven major management challenges:

1. financial management;
2. information technology security;
3. health, safety, and maintenance;
4. responsibility to Indians and Insular Areas;
5. resource protection and restoration;
6. revenue collections; and
7. acquisition management.

Given the disputed status, little progress had been made in addressing these and other challenges and was reflective of the contentious relationship between DOI management and OIG. The approach to resolving the management issues was not constructive and did not contribute to a resolution. Information was not shared between staffs in a manner that allowed reconciliation of facts or resolution of specific problems, and this made the communications and ongoing working relationship among staffs strained and less productive than they could have been.

The contentiousness of this relationship was noted in an assessment by the Association of Government Accountants (AGA), an independent party that reviews agency financial reports annually. AGA had been commenting on the issues surrounding the major management challenge reports and management's responses since 2007. In AGA's review of DOI's 2010 agency financial report, AGA noted that DOI management and OIG were clearly not in synch, did not agree on facts, and repeated other facts, and that readers of the report (e.g., Congress, the Office of Management and Budget [OMB], and the public) could easily be confused or misled. In addition, AGA cited that the management challenge reports and management's responses were not meeting the intent of the Reports Consolidation Act and OMB Circular A-136 for OIG to "assess and report *all* aspects of DOI's progress addressing the challenges, and management adding additional comments only when it believes the Inspector General's assessment is less than complete."

In 2011, OIG and DOI management accepted AGA's recommendation and changed the process for addressing and reporting management challenges by openly discussing the issues, the status of those issues, and the best approach for addressing them. Not only has this approach directly addressed the AGA comment, which did not appear in the 2011 review, it further complied with the Reports Consolidation Act and OMB Circular A-136 and has resulted in a more effective communication of current issues.

This statement is supported by the fact that the 2012 management challenges report includes five new challenges compared to 2010, and that six of the 2010 challenges (most of which dated back to 2007 and earlier) are no longer considered major. Ongoing high-level dialog between OIG and the Deputy Secretary and Assistant Secretary – Policy Management and Budget, as well as dialog at the staff level, all contribute to more meaningful corrective actions.

This more constructive approach and improved relationship have allowed DOI to work with OIG to design processes for more effective oversight of programs and process throughout DOI. For example, DOI issued stronger grants and financial assistance guidance that incorporated lessons learned from working with OIG to review and monitor financial assistance programs.

Because of this approach, DOI management is now seeking OIG investigation, feedback, and input on issues instead of hiding the issues. As a result, OIG is better situated to conduct reviews or investigations, and can offer an independent perspective and objective

recommendations. This has directly contributed to more accurate assessments of current management challenges, their severity, and the status of corrective actions. For example, in 2011, a new Director in a smaller DOI office had issued a disclaimed assurance statement on the status of his office's internal controls. Management could have kept the statement quiet and for internal use only. Given the new working environment, however, management met with OIG, shared the disclaimed statement, and asked OIG to investigate the status and extent of the issues raised. OIG's independent feedback gave DOI the information and insight necessary to determine if and how the issues should be reported and identify the corrective actions needed.

We do not know if other OIGs take this approach.

- b. How do you (a) ensure independence over the agency and (b) ensure that you don't end up doing the agency's own work of implementing its programs efficiently and conducting its own internal oversight?

Answer: (a) OIG is governed by independence standards in the realm of audits, inspections, and evaluations, as well as investigations. OIG and its staff take these standards very seriously and take great care to adhere to them. OIG is peer reviewed periodically, and independence is part of that review. OIG has not been found in violation of the independence standards.

(b) OIG also takes great care to draw a clear line between oversight and implementation. The independence standards provide very clear guidance in this regard.

Open and Unimplemented Recommendations

- 17) A report issued earlier this month by another Committee noted that "open and unimplemented IG recommendations could save taxpayers \$67 billion" in 2012.

- a. How many open and unimplemented recommendations do you have with DOI?

Answer: OIG and DOI are currently tracking approximately 600 open recommendations. There is approximately \$40.5 million in questioned costs and \$36.5 million in funds that could be put to better use. Only about 50 recommendations are awaiting a management decision as to their plan of resolution.

- b. How much could the Department save if your recommendations were incorporated, and how have these numbers changed over the years?

Answer: At the start of FY 2008, OIG was tracking \$16.3 million in questioned costs and \$28.2 million in funds that could be put to better use without management decisions. Since FY 2008, OIG issued reports that have questioned costs of \$55.2 million and an additional \$4.7 million in funds that could be put to better use. At the end of FY 2012, OIG is tracking \$516,000 in questioned costs and \$8,500 in funds that could be put to better use without management decisions.

18) Are certain issues more likely than others to be on the “open and unimplemented” recommendations *list* for DOI? If so, can you please elaborate on them?

Answer: Recommendations that cross multiple bureaus take longer to resolve and issues that need legislation or regulation changes. Recommendations are also more likely to remain as open and unimplemented for grant and Insular Area audits where implementation of the recommendations is not completely under the control of DOI. The following is a list of a few long-term issues that OIG provided to the other committee (mentioned in question #17 above):

Report Number/ Issue Date	Term of Recs	Description
C-EV-MOA-0009-2008 Issue Date: 02/27/2009	Long	Evaluation Report on Oil and Gas Production on Federal Leases: No Simple Answer - Both MMS and BLM employ inconsistent procedures and definitions and BLM’s records are often incomplete and inaccurate, all of which call into question both the integrity and the usefulness of their data. These data integrity issues are exacerbated by multiple, incompatible systems utilized by BLM and MMS. We found that due to incompatible data tracking systems used by BLM and MMS, DOI is at risk of losing millions of dollars in royalties. In one case, a breakdown of communications between BLM and MMS could have resulted in a loss of nearly \$6 million in royalties over a 5-year period, had the company holding the leases not sent its first production report to both bureaus and not just BLM. The existing process relies heavily upon companies doing the right thing. We recommended DOI work with BLM and MMS to identify the best existing system (either bureau’s system) for lease management and develop the capability for both bureaus to access and use this system, thus eliminating multiple systems, the need for manual reporting between the bureaus, and the attendant data-integrity problems that arise.
2002-I-0045 Issue Date: 08/19/2002	Long	Recreational Fee Demonstration Program - National Park Service and Bureau of Land Management - Both NPS and BLM have generally done a good job in managing their Fee Demo Programs. Fee Demo expenditures were generally reasonable and appropriate and used for the intended purposes. However, we did identify opportunities to enhance Program benefits. A primary concern was the completion rate of NPS Fee Demo projects. We believe that translating fee revenues into visible improvements is the major factor in ensuring the success and public acceptance of the program, and we have identified several areas in which NPS could improve its ability to complete Fee Demo projects.
C-IN-MOA-0049-2004 Issue Date: 06/13/2005	Long	Department of the Interior Concessions Management – DOI has established, as part of its strategic plan, a goal of providing for and receiving fair value in recreation. However, in our opinion DOI is not receiving a fair return in its concessions program. Although DOI has some of the most spectacular resources and wilderness areas in the world, it is still receiving a very low rate of return (about 5.7 percent) compared to other Federal and State agencies operating concession programs. In addition, DOI controls only \$26.7 million of fees generated by the concessions program. (This amount excludes fees held in concessioner special accounts.) Thus, the program return is even lower than the estimated 5.7 percent. If we were to subtract the program cost (at least \$11 million for National Park Service salaries and benefits), DOI actually nets less than \$15 million from a program that grosses over \$850 million to concessioners. We recommended DOI develop and implement an integrated management

Report Number/ Issue Date	Term of Recs	Description
		information system for maintaining and reporting concession data.
WR-EV-OSS-0012-2009 Issue Date: 12/23/2009	Long	Evaluation Report on the Department of the Interior's Appraisal Operations - The Appraisal Services Directorate (ASD) is not the strong and independent appraisal organization envisioned by the Secretary at its inception in 2003. From the outset, both external and internal obstacles have impeded ASD's ability to fulfill its mission and provide DOI with timely, independent appraisals and valuation services. In its October 2009 House Report (111-316), Congress directed DOI to revisit the appraisal services consolidation to immediately address delays in obtaining adequate appraisals for the acquisition of Federal lands. Based on our findings as well as the concerns recently voiced by Congress, we believe that DOI's appraisers must remain organizationally independent of the realty personnel in the bureaus. We made recommendations designed to ensure that ASD has full control of the contracting process, strong and effective leadership, and an organizational placement that enables it to provide timely, independent appraisals and valuation services.
CR-IN-BIA-0001-2011 Issue Date: 09/24/2012	Long	Final Evaluation Report - Oil and Gas Leasing in Indian Country: An Opportunity for Economic Development - The Bureau of Indian Affairs (BIA or Bureau) reviews and approves oil and gas and other mineral leases on Indian lands, which represent billions of dollars in overall annual economic benefits, significant to Indian Country. Insufficient guidance and oversight of oil and gas leases by DOI agencies have frustrated tribal officials and members, bureau employees, and the energy industry in Indian Country. In addition, Federal attempts to support tribal sovereignty through tribal energy resource agreements under the Energy Policy Act of 2005 have been hampered by complex regulations, insufficient funding, and tribal concerns about assuming increased responsibility. These problems contribute to a general preference by industry to acquire oil and gas leases on non-Indian lands. As a result, oil and gas leasing in Indian Country is not achieving its full economic potential, and frustration with leasing inefficiencies has led Indian landowners to take legal action against BIA. We made recommendations to strengthen BIA's management of Indian oil and gas development and help DOI fulfill the intent of the Energy Policy Act of 2005 by supporting Indian self-determination through oil and gas lease development.

Question submitted by Rep. David Schweikert

- 1) Since you were unaware of the Department of Interior's practice of using advocacy group lawsuits to craft regulation via court-ordered consent decrees, colloquially referred to as "sue-and-settle," I wanted to draw your attention to a letter from Senators David Vitter, John Boozman, James Inhofe, and Jeff Sessions (Attachments A and B). As you can see from the letter, Congress has previously raised the sue-and-settle issue several times. Since taxpayers are often ultimately responsible for the attorney legal fees associated with these sue-and-settle cases, moving forward, what steps will your office take to ensure proper auditing and oversight of all lawsuits that the Department of the Interior settles out of court?

Answer: During the audit of DOI's financial statements, the auditors, DOI financial officials and OIG review the listing of potential liabilities (including lawsuits) that will or could

adversely affect DOI (also called contingent liabilities). DOI financial officials and OIG review the contingent liabilities listings for reasonableness and consistency. The financial auditors ensure that the amounts reported by DOI are accurately and completely represented on the financial statements or in the statements' footnotes. If the amount reported for a case is significant, the auditors discuss these matters with DOI officials to determine if the outcome of the possible liability is probable. If this is the case, the amount should be reported on the financial statement balance sheet. If the outcome for the significant amount is reasonably possible, the event is disclosed in the footnotes to the financial statements. In addition, during the financial audit process, OIG is required by OMB to obtain and send the interim and final legal letters and schedule of possible liabilities to the Department of Justice, OMB, and the Department of the Treasury.

Last year, for FY 2012, DOI identified 360 reportable administrative proceedings, legal actions, and tort claims, which may result in settlements or decisions adverse to the Federal Government as high as \$4.6 billion. This was down from \$4.9 billion in FY 2011. In addition, DOI estimated up to \$1.2 billion in environmental and disposal liabilities in FY 2012.

Clearly, with approximately 250 employees, OIG is one of the smallest Cabinet-level OIGs, and thus simply cannot monitor every one of the 360 reportable legal liabilities facing DOI absent allegations of fraud, waste, or abuse. We do plan, however, to look at a cross section of settlements to determine if there is a pattern and practice of sue-and-settle that can be identified and reined in. We appreciate having this issue brought to our attention.

Questions submitted by Rep. Randy Neugebauer

- 1) As you know, last year the Fish & Wildlife Service (FWS) settled a major lawsuit with environmental groups involving hundreds of candidate species for the Endangered Species list. This lawsuit settlement was agreed upon behind closed doors and has resulted in an arbitrary structure of listing proposals, including the Lesser Prairie Chicken in my district and across a total of five states. This settlement agreement required no public comment and even the details of the back-room deal remain locked away from public scrutiny. If the Lesser Prairie Chicken were listed as threatened, as proposed by FWS, my district would face drastic economic consequences. It is utterly unacceptable that the Service refuses to release the details behind the settlement that led to this proposal.
 - a. To what degree can the Inspector General of the Department of the Interior get involved with oversight or investigation of this and other settlement agreements?
 - b. How do you perceive these types of closed-door agreements affecting the transparency, integrity, and scientific justification for listing these species?
 - c. How can Congress help to improve the openness of this type of agreement in the future?
 - d. What other suggestions do you have to improve the transparency, scientific integrity, and unbiased justification for proposed listings of species under the Endangered Species Act?

Answer: OIG was not aware of this issue and does not routinely monitor listing decisions absent allegations of fraud, waste, abuse, or misconduct. Although we have met with

Committee staff several times, this issue has not been brought to our attention. It does not emanate from DOI's top management challenges, and is not envisioned in our targeted areas for future audits, inspections and evaluations.